

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GARY NELSON BUGH,

Petitioner,

v.

Case No. 18-cr-20720

UNITED STATES OF AMERICA,

Hon. Thomas L. Ludington

Respondent.

**ORDER DENYING PETITIONER'S SECOND MOTION FOR AN EXTENSION OF
TIME TO FILE OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, OVERRULING PETITIONER'S OBJECTIONS AS MOOT,
ADOPTING THE REPORT AND RECOMMENDATION, AND DENYING
PETITIONER'S MOTION TO VACATE**

On March 14, 2019 Petitioner pled guilty to one count of attempted sexual exploitation of a child in violation of 18 U.S.C. §2251. ECF No. 21. He was sentenced to 360 months in custody and supervised release for life. ECF No. 31. On August 19, 2020, Petitioner filed the instant Motion to Vacate his Sentence under 28 U.S.C. § 2255. ECF No. 33. The Motion was referred to Magistrate Judge Morris. ECF No. 35. On January 12, 2021, Magistrate Judge Morris issued her Report and recommended that Petitioner's Motion to Vacate be denied. ECF No. 41.

On February 8, 2021, the Report and Recommendation was returned as undeliverable due to a clerical error. ECF No. 42. On February 16, 2021, the Order was re-sent to Defendant, with the correct inmate number. Defendant was provided 14 days to mail his objections to the Report and Recommendation after service. ECF No. 43. Petitioner filed a motion to extend his time to file objections on March 5, 2021 (docketed April 1, 2021 due to mailing delays). ECF No. 45. On

March 17, 2021, Petitioner filed his Objections to the Report and Recommendation (docketed March 31, 2021 due to mailing delays). ECF No. 44.

14 days from the date of service of the Report and Recommendation was March 2, 2021. Petitioner did not file his Motion to Extend Time to File Objections until March 5, 2021. Petitioner admits that he received the Report and Recommendation 10 days after the court mailed it. ECF No. 45 at PageID.245 (“I literally received it approx. 10 days after its mailing from the Court.”). Ten days after this Court mailed the Report and Recommendation would be February 26, 2021. Petitioner waited seven days to file his Motion to Extend. His Motion to Extend will be denied and his Objections will be denied as untimely.

Although the Magistrate Judge’s Report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither party has timely filed any objections. The election not to file objections to the magistrate judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. As such, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted in this case. The Court further concludes that Petitioner should not be granted leave to proceed in forma pauperis on appeal, as any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

Accordingly, it is **ORDERED** that the Magistrate Judge’s Report and Recommendation, ECF No. 41, is **ADOPTED**.

It is further **ORDERED** that Petitioner’s Motion to Extend, ECF No. 45, is **DENIED**.

It is further **ORDERED** that Petitioner’s Objections, ECF No. 44, are **OVERRULED** as untimely.

It is further **ORDERED** that Petitioner Bugh's Motion to Vacate his Sentence, ECF No. 33, is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that leave to proceed in forma pauperis on appeal is **DENIED**.

Dated: April 19, 2021

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge